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PATENT

Attorney Reference Number 6522-78332-01
Application Number 10/661,411

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Gary A. Snyder

Application No. 10/661,411

Filed: September 12, 2003

Confirmation No. 6660

For: GRAPE FLAVORED POME FRUIT

Examiner: Jyoti Chawla

Art Unit: 1761

Attorney Reference No. 6522-78332-01

FILED VIA EFS

COMMISSIONER FOR PATENTS
SUBMITTED VIA ELECTRONIC FILING SYSTEM

DECLARATION

1. I, Todd Snyder, am the marketing manager of Snyder LLC or C&O Nursery, Inc. In my capacity as marketing manager, I am familiar with marketing and sales of grape flavored apples that are one of the subjects of the above-referenced patent application (herein after Subject Apples). The Subject Apples are marketed under the trademark GRAPPLE®.

2. I have read the above-referenced patent application and I understand that claims of the patent application, including claims that cover the Subject Apples and methods of making the Subject Apples, have been rejected as being obvious.

3. The Subject Apples have been commercially successful as evidenced by sales and consumer survey results. Over 250,000 Euros of the Subject Apples were sold (under the GRAPPLE® trademark) during the first year of sales (2004-2005) and strong sales have been experienced during the following years as production and distribution of the product developed (see Table 1, below). The average price per pound of Subject Apples is about \$1.09. Similar apples that do not have a grape flavor sell for an average price of \$0.53 per pound. Therefore, the Subject Apples have commanded a premium price.

4. The sales of the Subject Apples are summarized in Table 1 below.

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Table 1

| Year | Euros of Subject Apples Sold | Wholesale Value | Price per Euro** |
|----------|------------------------------|-----------------|------------------|
| 2004-05 | 252,031 | \$6,773,444 | \$26.87 |
| 2005-06 | 173,121 | \$4,847,388 | \$28.00 |
| 2006-07 | 213,951 | \$5,979,106 | \$27.95 |
| 2007-08* | 130,287 | \$3,750,402 | \$28.79 |
| TOTALS | 769,390 | \$21,350,340 | \$27.75 |

*sales figures are representative of only a portion of 2007, namely August 1, 2007-January 31, 2008. Over the same time period the prior year (August 1, 2006-January 31, 2007) only 93,932 Euros were sold, therefore, these figures represent a 39% increase.

** Euro refers to a container that includes 26 pounds of product.

5. Consumer survey results also indicate that 77.8% of purchasers of the Subject Apples, being sold under the GRAPPLE® trademark, would recommend the Subject Apples to a friend. Moreover, of the 11, 034 surveys that have been received from January 1, 2004 to December 31, 2007, over 56% of the respondents ranked the Subject Apples "Fantastic," the highest rating, and over 20% of the respondents ranked the Subject Apples "Very Good," the second highest rating. Only 7% rated the product "unsatisfactory". In short, the vast majority of consumer responses to the Subject Apples has been extremely positive.

6. Developing and distributing the Subject Apples has been a challenge because of the lack of precedent for regulatory agencies to rely upon in making their decisions. This problem was discovered when regulatory agencies were contacted for the appropriate approvals. Because of the lack of similar prior products being sold, the United States Department of Agriculture and the Canadian Food Inspection Agency were uncertain as to how to classify the Subject Apples. The confusion has related, in part, to whether the Subject Apples can be classified as "fresh" or if they are "processed." The final decision by the Canadian Food Inspection Agency has been that the Subject Apples are fresh, but that because they contain a flavoring agent, they must meet labeling requirements for ingredients as well. This issue underscores the uniqueness of the Subject Apples.

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7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Signed name

TODD A. Snyder

Printed or typed name

2-25-08

Date